IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

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WRIT PETITION NO : 4967 of 2004

Between:

D.Hanumantha Rao, S/o.Laxmipathi,

R/o.Mancherial, Adilabad District. **..... PETITIONER**

AND

1.The Adilabad District Cooperative Central Bank Ltd.

rep.by its General Manager, Adilabad.
2.The General Manager, Adilabad District

Cooperative Central bank, Adilabad. **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of writ of mandamus declaring the action of the respondents in continuing the disciplinary proceedings pursuant to the charge memo dated 14.12.2000 after the date of superannuation of the petitioner and further issuing the impugned penalty order of fine of Rs.25,000/- through proceedings No.BKG/E/F.13/2003-2004/754 dated 12.09.2003 and further with holding a sum of Rs.50,000/- from the gratuity amount of the petitioner without any order as totally illegal and without jurisdiction and consequently direct the respondents to release all the benefits to the petitioner including the fine amount of Rs.25,000/- recovered from the petitioner, with-held amount of Rs.50,000/- from the gratuity, arrears of pay fixation and other benefits with interest @ 18% from the date due to the date of payment with all consequential benefits.

Counsel for the Petitioner: MR.S.LAKSHMA REDDY

Counsel for the Respondents: MR.K.NAGESWARA SREE

The Court made the following :

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ORDER:

The petitioner was appointed as a supervisor in the Adilabad District Co-operative Central Bank on 10-12-1961. Though he was due to retire on 10-12-2000, he was retired by the end of the month on 31-12-2000. The second respondent issued a charge memo dated 14-12-2000 to the petitioner and even after issuing the said charge memo, he was allowed to retire without imposing any condition. Pursuant to the charge memo dated 14-12-2000, after lapse of 1 ½ year of the retirement, enquiry report was submitted by the Enquiry Officer on 21-03-2003, and an order imposing a fine of Rs.25,000/- has been passed on 12-9-2003.

The grievance of the petitioner is that his gratuity amount and the other retirement benefits have not been paid for the last 3 ½ years, and apart from the withholding his retirement benefits, he was forced to pay a fine of Rs.25,000/-.

It is submitted by the learned Counsel for the petitioner that once an employee is retired, the relationship of master and servant ceases and hence, the question of continuing disciplinary proceedings against a retired employee does not arise. Therefore, he submits that the continuation of the disciplinary proceedings, consequential report and the order imposing the fine against the petitioner is illegal and, he is entitled for the refund of the fine amount.

A counter has been filed by the respondent stating that the disciplinary proceedings initiated against the petitioner was continued even after his retirement, as per the provisions of I.T.Award under Chapter VIII governing the service conditions of the Bank. It is further stated that the departmental enquiry was conducted by appointing an Enquiry Officer, who submitted his report on 21-3-2003 and found the petitioner

guilty of all the charges leveled against him. Pursuant to the said order, a fine of Rs.25,000/- was imposed vide order dated 12-9-2003.

The learned Counsel for the respondent contended that the petitioner, if aggrieved by the same, can approach the Appellate Authority by filing an appeal within a period of three months, but the petitioner without approaching the said Authority, accepted the said punishment by remitting the fine amount and hence, the petitioner cannot question the action of the respondents by filing the present writ petition and the same is liable to be dismissed.

The issue raised in this writ petition is squarely covered by the Judgment of a Division Bench of this Court in the case of ***'General Manager, Adilabad District Co-operative Central Bank Limited., Adilabad vs. K.Rangarao and another'***. Incidentally, the appellant in the said appeal and the respondent herein is one and the same. The Division Bench categorically found that, in respect of the respondent Bank there is no provision either in the byelaws or any other regulations permitting the Bank to continue or initiate disciplinary enquiry against a superannuated employee. Further it was held that the question of taking disciplinary proceedings against the retired employee would not arise after the relationship of the employee and employer had seized. It is well settled law that if the disciplinary action is sought to be taken against an employee, it must be done before he retires and if a disciplinary enquiry cannot be concluded before the date of retirement, the course open to the authority is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and final order is passed therein. The Division Bench further held that even if there is an order of the Bank allowing its employee to retire without prejudice to the rights of the Bank to continue the disciplinary proceedings, the same was not permissible in law, and the only course open to the authority is not to allow its employees to retire on superannuation.

In the instant case there is no order that the respondent-Bank permitted the petitioner to retire without any prejudice to continue the disciplinary proceedings. In view of the aforesaid decision, I am of the view that the continuance of the disciplinary proceedings, enquiry report and the consequential order imposing the fine against the petitioner are unsustainable and are liable to be set aside.

Therefore, the writ petition is allowed. The respondent-Bank is directed to

release all the retrial benefits of the petitioner including the fine amount of Rs.25,000/- collected from him, and also the gratuity amount of Rs.50,000/-, which was due to the petitioner, in accordance with law. No costs.

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26th July, 2004

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Monday, the twenty sixth day of July, Two thousand and four.

REGISTRAR

To:

1.The General Manager,

Adilabad District Cooperative Central Bank Ltd.

Adilabad.
2.Two CD copies.